IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 13655 of 2004(A)

PETITIONER:

THE NATIONAL INSTITUTE OF TECHNOLOGY
CALICUT MULTI PURPOSE CO-OPERATIVE SOCIETY LTD.
NO.D 1883, CALICUT REP.BY ITS SECRETARY.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:
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1. THE DEPUTY LABOUR COMMISSIONER,
KOZHIKODE, APPELLATE AUTHORITY UNDER KERALA
PAYMENT OF SUBSISTANCE ALLOWANCE ACT 1972.

2. M.K.GOPALAN, MANAGER (UNDER SUSPENSION),
S/O. VALU, MAYYANKANDIYIL, VENNALOOR,
CHULOOR, KOZHIKODE.

R1 BY GOVT. PLEADER SMT.T.B.RAMANI
R2 BY ADV. SRI.THOMAS ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, ALONG WITH WPC NO. 5053 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.13655/04

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF PETITION FILED BY 2ND RESPONDENT BEFORE THE FIRST RESPONDENT DATED 23.7.01.

EXT.P2: TRUE COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE the FIRST RESPONDENT DATED 14.8.01.

EXT.P3: TRUE CPHOTOCOPY OF THE NOTICE OF THE PETITIONER SOCIETY CIRCULATED BY 2ND RESPONDENT DATED 24.1.96.

EXT.P4: TRUE PHOTOCOPY OF THE RESOLUTION NO.16 OF THE PETITIONER SOCIETY DATED 11.11.99.

EXT.P5: TRUE COPY OF THE ORDER PASSED BY FIRST RESPONDETN IN SAC 6/02 DTD. 20.2.04.

RESPONDENT'S EXHIBITS:

EXT.R2(a): TRUE PHOTOCOPY OF THE APPENDIX PART I AND PART II OF THE BYE LAW OF THE PETITIONER'S SOCIETY.

EXT.R2(b): TRUE PHOTOCOPY OF THE LETTER DATED 17.11.1999 AS RECEIVED BY THE PETITIONER FROM THE OFFICE OF THE JOINT REGISTRAR.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).Nos.13655 OF 2004 & 5053 OF 2006

Dated this the 9th day of August, 2007

JUDGMENT

These writ petitions are filed by a co-operative society challenging the decision of the Labour Commissioner passing orders, granting subsistence allowance the private respondent under the Payment of Subsistence Allowance Act.

2. The crucial contention raised by the society is that the employee in question is not one, to whom, the Act applies and that he is one who belongs to the managerial cadre, while the contention of the employee is that, though the nomenclature of his post is “Manager”, the duties and responsibilities attached to the office involves no managerial content, but is only a work without any supervisory function.

3. Going by the special bye-laws relating to the service conditions of the employees of the society, which is Ext.R2(a) in W.P(C).13655/04, same qualifications are prescribed for the

Manager, Clerk and Casher. Clause 14 (iii) of those special bye-laws provides that President shall be the authority competent to impose certain penalties on Manager, Clerk and Typist while Secretary shall be the authority competent to impose certain punishments on Attender and Salesman. Therefore, Manager and Secretary are two different officers.

The statutory authority has relied on, among other things, item No.8 of the minutes dated 11.11.1999, whereby, the bills and vouchers in relation to expenditure and income for every day has to be prepared and handed over to the Secretary. The statutory authority also noticed that in view of the provisions in the bye-laws, it is unacceptable an argument at the hands of the society, that Rule 47 of the Kerala Co-operative Societies Rules is relevant to decide the issue.

4. The requirement in Rule 47 (a) that it shall be the duty of the Paid Secretary/Manager to maintain proper books of accounts, registers, other records etc., by itself, is no evidence

to conclude that in a particular society, the modus operandi of the office is the same as is provided in the rules, particularly when the bye-laws clearly laid down that the functioning shall be under the control of the Secretary. The statutory authority, having also relied on item No.8 of the minutes dated 11.11.1999 as noticed above, I do not find that the impugned orders are vitiated on account of any legal infirmity or jurisdictional error. These writ petitions fail and are therefore, dismissed.

On pronouncing this judgment, learned counsel for the petitioner urged that the society may be permitted to adjust the amounts due to the second respondent in terms of the impugned orders, against the amounts that could be recovered from him which may be due to the society on account of the alleged misappropriation. It is stated that the society concluded the enquiry and removed the second respondent from service and that the matter is gaining the attention of the statutory authority. Therefore, I do not find that it is appropriate for this Court to issue any direction as sought for by the petitioner. That apart, in

the realm of labour law, it is inappropriate to order any restriction on the statutory entitlement to subsistence allowance. The direction sought for is, therefore, declined.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.